



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 20, 1996

Mr. Tracy A. Pounders
Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR96-1493

Dear Mr. Pounders:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 27624.

The City of Dallas (the "city") has received two requests for two apparently unrelated Emergency Medical Service ("EMS") patient forms. Specifically, the requestors seek the patient forms for incident numbers 977, December 20, 1990, and 452, December 8, 1983, respectively. You have submitted the requested information to us for review and claim that the city may withhold it from required public disclosure.

You advise us that the city received the first open records request on May 31, 1994, and the second on June 15, 1994. You asked for a determination from this office on July 13, 1994. On the basis of these facts, we conclude that the city failed to request a decision within the ten-day period section 552.301(a) of the Government Code mandates. Consequently, pursuant to section 552.302, we must presume that the requested information is public. A governmental body may overcome this presumption only by showing a compelling reason for withholding the information. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982) at 1-2. For example, the governmental body may overcome the presumption of openness by a compelling demonstration that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2. You claim that section

552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code excepts the requested information from required public disclosure. Because the statutes you raise pertain to confidential information, we will proceed to consider your request.

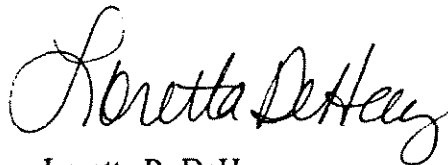
Section 552.101 of the act excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 773.091(b) of the Health and Safety Code provides:

Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

We do not understand any of the exceptions to confidentiality set forth in section 773.092 of the Health and Safety Code to apply in this instance. Accordingly, the city must withhold the requested information in its entirety under section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Loretta DeHay", written in a cursive style.

Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Enclosures: Submitted documents

Ref.: ID# 27624

cc: Mr. David Arps
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